As the Commission has tentatively concluded, "effective competition" should be measured on a franchise area basis. That is the only basis referred to in the statutory definition of "effective competition." 47 U.S.C. § 543(1). It is also the most sensible approach. If regulation is to be administered on a franchise-specific basis, "effective competition" should be determined on that same basis. <u>See</u> also Part VI.A.

F. Filing of Franchise Authority Certification [¶19-21]

To implement this proposal, the Commission should amend the proposed certification form. Each franchising authority should certify that the local cable operator received 30 days advance notice. The form should also ask whether the operator provided any response, what that response was, and outline the nature of any expressed opposition.[6/]

Continental strongly disagrees with the suggestion that the 1992 Act abrogates inconsistent franchise agreements and constitutes "an independent source of authority to regulate rates." Municipal franchising authorities are creatures of state

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6/ The operator's failure to respond to the franchising authority should not be construed as a waiver of its right to contest the certification before the Commission. Initially, it may be difficult for cable operators to respond to certification notifications in a timely fashion. In some instances, the cable operator may conclude it would be pointless to contest the matter at the local level.

law limited to those powers granted by State Constitution, statute, or charter. Subscriber Rates-CATV, 57 F.C.C.2d 368, 369 (1976) ("our rules do not, and cannot give authority to franchising bodies when that authority does not exist under State law.") Franchising authorities must demonstrate that they have authority pursuant to applicable state and local laws, in order to make any sense out of the plain language of Section 623(a)(3)(B). The City of Lansing, Michigan, for example, affirmatively deregulated rates by ordinance in 1979 in exchange for the creation of a low cost "community cablevision" service underwritten by deregulated prices on other services. Such franchising authorities are contractually and constitutionally precluded from asserting rate regulation authority.

The House Report briefly addresses this issue and, like the Commission, concludes that franchising authorities can now unilaterally impose rate regulation. But the Report reveals a fundamental misunderstanding of the dynamics underlying the franchising process. It notes that rate deregulation under the 1984 Act "eliminat[ed] the need for rate regulation provisions in many franchise agreements."[7/] It also fails to address entirely that some franchise authorities, such as Lansing, contractually chose to deregulate cable rates prior to the 1984 Act when such rates were subject to regulation.

7/ See H.R. Rep. at 81.

The reality too is that franchise negotiators were well aware that federal deregulation might not remain. Indeed, even before Congress adopted the 1992 Act, the Commission had increased the governing "effective competition" standards under the 1984 Act from three to six over-the-air signals. Franchising authorities committed to exercising lawful rate regulation expressly reserved that right in their agreements with local cable operators, notwithstanding the then prevailing federal preemption. That reservation was often fiercely negotiated. Without that reservation, franchising authorities lack the legal authority. The certification form should therefore identify the source of authority in state and local law.

The NPRM asks whether multiple franchising authorities can certify and exercise joint regulatory jurisidiction. Franchise agreements are usually entered into on a community-by-community basis. The particulars of cable service vary widely from community to community, often depending on franchise obligations and term. See Part VI.A (2). It is on that franchise basis that they should be administered. The sole exception to that rule should be in cases where the initial franchise encompasses multiple communities. For instance, in Dakota County (MN), six communities served by the same Continental system operate under a joint powers agreement. Similarly, in north central Connecticut, ten communities served by Continental are governed by a single franchise granted by the

DPUC. In both cases, each city's franchise has identical terms and runs for the same period of time. By contrast, where communities are served by the same system but their franchises contain different terms and conditions, were awarded in different years, and run for different periods, we do not believe they can effectively exercise joint rate regulatory authority.

G. Approval of Certification by the Commission [¶22-24]

The certification process should be quick and simple; it should not be automatic. We suggest the following modifications.

First, franchising authorities should advise cable operators in writing 15 days before filing with the FCC. As explained above, this will give the parties the opportunity to address the matter on an informal basis. In many instances, the matter may be resolved without imposing any burden whatsoever on the Commission.

Second, cable operators should be afforded the right to contest certification requests on jurisdictional grounds prior to Commission action. It would make little sense to allow franchising authorities to commence rate regulation proceedings where they lack the jurisdiction to do so. If an operator believes the franchising authority lacks regulatory authority because of either a legal deficiency [47 U.S.C. §

543(a)(3)(A),(B)] or the presence of effective competition [47 U.S.C. § 543(a)(2)], those issues should be resolved during the certification process. Those issues can be relatively easy to adjudicate and are readily distinguished from issues of whether the franchising authority will properly exercise regulatory authority. The latter can generally be put off until after the franchising authority reaches a rate decision.

Under this proposal, the vast majority of certification applications will likely go unchallenged and can be approved within the 30 day statutory period. After an initial transition period, it may even be possible for the Commission to devise a pleading cycle that will allow all certification requests to be decided within the 30 day statutory period. But the volume of activity surrounding the implementation of 1992 Act rate regulation will likely make that impossible at first. That burden does not mean that the Commission should issue meaningless certifications. If a bona fide challenge is submitted within the 30 day cycle, certification should be delayed until the franchising authority can reply and the Commission can properly address the matter. Any other approach risks squandering the resources of franchising authorities and cable operators in pointless regulatory proceedings.[8/]

8/ If the Commission is committed to issuing initial certifications based solely on the franchising authority's

[Footnote cont'd.]

H. Revocation of Certification [¶25-26]

If the franchising authority improperly exercises its authority, revocation of certification may be appropriate. But if the rules are sufficiently streamlined, specific, and easily administered, revocation may be infrequent. As a general rule, the Commission should remand the case to an errant franchising authority with instructions how the original error should be corrected. Local authority should be revoked only if the authority has willfully or repeatedly violated Commission regulations.

IV. BASIC RATE STANDARDS

A. Basic Principles

The Commission's first principles in formulating basic rate standards should be these:

(1) Balance

We agree with the Commission's premise that balancing the goals and statutory criteria for basic rate regulation is the

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[Footnote cont'd.]

application, it should establish a process where that certification can be subsequently challenged, without placing any additional burden of proof on the cable operator.

only way to make sense out of otherwise inconsistent standards and constitutional protections. For example, overbuilds which create "effective competition" frequently also produce initial price wars, with prices plunging down to average variable cost -- the floor beneath which antitrust law begins to presume predatory pricing.[9/] Average variable cost covers operating expenses but provides no recovery of major capital costs or a return on investment.[10/] Such pricing, if compulsory, would be unconstitutional.[11/] Indeed, in measuring prices in "overbuild" markets the Commission should exclude systems which have not engaged in head-to-head competition for more than five years or are otherwise not operating at a profit. Similarly, "effective competition" as the sole test for "reasonable" prices would nullify six of the seven statutory criteria for basic rate formulation, and also ignore the impact of future retransmission consent costs for which the Commission must also account. The only way to make sense of the statute is to balance the factors into a sensible whole. [¶31]

9/ See, e.g., In Glasgow (Ky), the Accent's on Competition, Multichannel News, Jan. 25, 1993, pp.3, 47 (Municipal electric plant board states "our cable business is not designed to produce revenue; it's designed to produce a service, to break even.").

10/ See, e.g., Policy & Rules Concerning Rates for Dominant Carriers, 66 R.R.2d 372, 483 (1989).

11/ Duquesne Light Co. v. Barasch, 488 U.S. 299, 310 (1988); Permian Basin Area Rate Cases, 390 U.S. 747, 791-92 (1968).

We disagree with the suggestion at n.60 that retransmission consent costs will not be specifically accounted for. The benchmarks we recommend will provide for adjustment for all costs of implementing the 1992 Act, including the cost of channel realignment and retransmission consent costs.

(2) Cable is Not Telephone

Underlying much of the NPRM is a misimpression that what has worked for telephone -- such as unbundling or price caps -- will work for cable. As detailed in Appendices B and C, the industries have highly distinct economic structures which preclude the wholesale application of telephone principles.

- The local franchising process, particularly those franchises issued during the "franchise wars" of the late 1970's and early 1980's, led cable operators to run their businesses for long-term cash flow rather than the immediate, steady earnings and dividend payouts that characterize public utilities and today's local telephone companies. Cable investors' rewards usually occur through system growth and capital appreciation, not through dividends which would otherwise burden subscription rates.

- Cable operators base their economic analyses on the same factors that affect any industry, including technology and financial conditions (tempered by the limited duration of cable franchises). Thus, rather than basing decisions in terms of "revenue requirements," operators routinely write off assets which under telephone accounting would be retained in ratebase and eventually be recovered through regulated rates. For instance, Continental has written off nearly $100 million of assets in the last four years alone. In a utility accounting, this would have otherwise increased subscriber fees by $0.72 to $0.86 per month.

- A cable operator's capital additions are far "lumpier" than are those of LECs. Like small telephone companies, these capital needs cannot be accommodated with individual cost of service studies.

- Cable television systems' reinvestment rates are triple those of large LECs. Continental's annual reinvestment in property, plant and equipment exceeds the amount of cash generated from operations and cannot be paid for out of current subscriber revenues.

- Book value and classical utility ratemaking is rooted in the asset conversion cycle, which does not accurately indicate future earnings in many businesses. As a result, many unregulated businesses, such as real estate, are like cable valued on the basis of cash flow.

- In a growth industry like cable, the nominal "per subscriber" price often reflects a buyer's expectation that services will be upgraded and penetration will increase. When Continental paid $1,400 "per subscriber" in 1986 for four McClatchy systems in Northern California, it represented a record price. But system improvements made by Continental increased penetration from 41% to 58%. Similarly, Continental increased Jacksonville, Florida subscriptions from 88,000 (upon purchase in 1983) to 170,000.

- The beta factors of cable television firms -- that is, the sensitivity of their stock prices to movements in the price of large groups of stocks -- are over 80% higher than those of the LECs. The cost of debt capital is higher for cable than for LECs. It takes a far greater time for a cable company to realize on its investment and return cash to investors. These are impartial, market demonstrations that cable television valuation is based on its long-term return of investment, not on low risk profiteering from monopoly rents.

- Price caps "work" for telephone because it is a declining cost industry; because it has efficiencies to gain by cutting personnel built up under decades of noncompetitive "cost-plus" pricing; and because it has a long history of cost-based regulation providing appropriate starting points for price caps. By contrast, the cable industry is an <u>increasing</u> cost industry, as new plant and new services are created. As to potential efficiencies, cable has seldom been accused of having _too many_ customer service or technical personnel: indeed, LECs have more than twice as many employees per access line as cable has per subscriber. Nor does cable have a substantial cost-based pricing history from which appropriate price caps might be derived.

(3) Rate of Return Regulation Should Be a Last Resort

The Commission has rightly concluded that rate of return regulation suffers too many drawbacks to be embraced as the primary tool of cable rate regulation. Rate of return regulation provides no incentives for efficiency. It slows innovation -- a particularly troublesome prospect for an industry founded on innovation and relied upon for information and entertainment. Its high costs of administration are ultimately visited upon customers and taxpayers. It focuses a firm's attention on current, steady returns on investment, rather than on long-term growth.

Nonetheless, if the FCC assumes regulatory authority over the cable industry, it also assumes a constitutional obligation to assure a fair return. As discussed below, rate of return regulation should remain available as a safety valve for individual cases where benchmarks must be exceeded or where alternative regulation would be confiscatory.

B. Benchmarking [¶34-38]

In contrast to rate of return regulation, benchmarks import incentives and efficiencies into the regulatory scheme. Benchmarks set by industry standards (that is, not tied exclusively to a firm's own performance) provide incentives for efficiencies and innovation by permitting the firm to retain the proceeds of cost savings. Yet they do so without the disadvantages of price caps (discussed above). Benchmarks also are far less expensive to administer, by dispensing with the need for uniform accounting and depreciation rules, regulators with years of experience in the arcane art of utility ratemaking, and the traumas of full fledged rate cases.

The Commission may be reluctant to establish basic service benchmarks which will be used by cable operators with lower prices to justify rapid increases to the benchmark. However, if the basic benchmark is already established at "competitive" levels, there is no reason to deny a "good actor" the right to recover that price. At the very least, some accommodation must be afforded to operators who are merely readjusting prices between a subsidized basic price and satellite tier. Thus, whatever price cap may be applied to a basic service increase should not apply changes that are revenue neutral to the operator, such as the reconfiguration of an $8 basic and $12 satellite tier into a $10 basic and $10 satellite tier, particularly if such changes are intended to bring the operator within the FCC's benchmarks. [¶34]

There should, however, be individual (line itemized) franchise adjustments for new costs imposed by franchising authorities and state and local governments. This would include franchise fees (including renewal and consulting fees), taxes, higher access fees, possessory interest taxes, and other volatile charges for which there should be political accountability. There should be no invitation to franchising authorities to adopt new assessments which squeeze an operator against benchmarks without an opportunity to earn a fair return. See Part VI. [¶37].

A service price index would probably demonstrate how reasonable cable rates have actually been. Our development of the service price index for Tiffin, Ohio, the first community served by Continental in 1964, suggests that basic service is substantially underpriced when compared to other services identified by the Commission in note 70. Appendix F. However theoretically attractive a suggested service price index may be, it would likely entail unnecessary administrative complexity. [¶38]

C. Benchmark Alternatives

(1) Benchmarks Based On Systems With Effective Competition [¶41-43]

Based upon Continental's preliminary study, a benchmark rate analysis based primarily on cable systems subject to effective competition, and reflecting average current rates as well as selected system characteristics, has a number of compelling advantages. The data needed to establish such benchmarks appear to be embraced within the Commission's current survey of 850 cable systems. That survey data may become the best source for analyzing cable ratesetting. The Commission's survey is far more comprehensive than earlier rate surveys by the General Accounting Office, and should be more accurate and complete than trade encyclopedias. New video service entrants virtually ensure that the effective competition benchmark will become more robust as time goes on.

The results of an equipment cost based upon directly attributable values plus reasonable overheads could be utilized as a supplemental cost cap, consistent with an overall benchmark system of regulation. The cost cap would be calculated using standardized factors and methods applicable to all systems, and might even be applied to different types of equipment or additional outlets. Then, the lower of the calculated cost or the operator's actual price for equipment, if the price is stated separately, would be reintegrated into one rate benchmarks using uniform, simple allocators. Using a combination of methods like this ensures first that the cost "cap" can be established to meet the requirements of the 1992 Act and second that the overall ease of use of a benchmark approach to basic service is largely transparent to the equipment cost tests ultimately adopted by the Commission.

(2) Benchmarks Based on Past Regulated Rates [¶44-45]

The proposal to establish rates based upon 1984 or 1986 costs cannot work. The 1984 Act was premised on the need to release cable from local governments' artificial restraint on rates, which drastically lagged CPI despite dramatic improvements in plant and product. Indeed, many systems in 1986 were still operating under multiyear rate freezes. For instance, Continental's St. Paul, Minnesota, franchise was awarded in 1983 but rates for all services were frozen until 1987. Continental Cablevision alone has invested more than $1.1 billion in capital additions since 1984, premised on its ability to recover those costs without artificial restraints. To be absolutely clear, this billion dollar plus capital expenditure that Continental has made since passage of the 1984 Act only represents additions to property, plant and equipment. It does not include any cable system aquisition costs. Even allowing for inflation adjustments, to roll any company back to 1984 or 1986 <u>after</u> such investment is unfair, retroactive and a taking. A further problem with using 1986 as a start year is that since 1986 many systems were acquired, rebuilt, or integrated with adjacent systems. Therefore, many 1986 rates do not reflect post-1986 capital costs or new configurations. Continental knows of no mechanism to adjust each system fairly and individually, based upon its own expenditures and investment record, without plunging back into the rate of return quagmire which the Commission has rightly avoided. [¶44]

(3) Benchmarks Based Upon Average Rates [¶46-47]

As discussed above, Continental believes that current average rates are an important part of the overall benchmark mechanism. As the Commission notes, average rates would be "readily available and appropriate for defining an initial set of benchmarks." Again, the survey data now being collected by the Commission should be suitable to develop not just a simple national average rate, but a series of rate benchmarks based upon statistically significant differences in the system characteristics being collected through the survey.[12/] It will be important both to the industry and to consumers that any combination of average-rate or effective competition benchmarks

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12/ Even the September 30, 1992 data collected by the Commission will have to be adjusted to account for the six-month period of time which will have elapsed before the Commission issues its rate regulations.

be designed to operate efficiently. This objective requires several steps:

- First, because no benchmark system is likely to perfectly track evolving industry conditions, particularly given the rapid changes being confronted by the cable industry today, the rate benchmarks must effectively account for discontinuities between different rate classes. An operator should not face a disincentive, such as becoming subject to a different, lower basic rate benchmark, because it undertakes an activity that expands options and choices available to consumers. Frequent recalculations of the basic rate benchmarks could have precisely this effect, however. Thus, the basic service benchmarks should only be recalculated no more frequently than annually.

- Second, at least for the initial period of using the benchmarks, the effects on consumers and system operators should be ameliorated by smoothing the rates allowable at different benchmarks. Instead of benchmarks being established at a fixed rate level, operators should have a limited "safe harbor" zone within benchmark rate bands of approximately ± 10%.

- Finally, as noted in Appendix C, the very process of implementing the 1992 Act almost surely will have interactive effects on cable operator's rates and costs. Implementation of effective rate benchmarks (or indeed any effective and fair system of rate regulation) may require the Commission to allow the industry a one-time correction period. During this period, operators would be allowed to make only two types of adjustments and then the basic service tier benchmarks would be recalculated. First, system operators would be allowed to make any rate change needed to comply with terms of the Act so long as those rate changes were revenue-neutral to the operator in the aggregate. Second, net rate increases would be authorized on a one-time basis for the incremental costs added by compliance with specific provisions of the 1992 Act, including new retransmission consent fees or costs imposed by any new technical requirement emanating from other Commission dockets.

(4) Cost of Service Benchmark [¶48]

We have previously discussed the shortcomings of cost of service pricing. However, we have developed an equipment "cost cap" described in Appendix D.

(5) Price Caps [¶49-52]

We have previously discussed the inapplicability of price caps to cable. See Part IV.A.3.

D. Individual System Alternatives

(1) Direct Costs of Signals Plus Nominal Contribution to Joint and Common Costs [¶53-56]

The partial cost-based approach to evaluating basic rates for individual franchises suffers from several potential deficiencies, particularly if it were to be applied as the general rate regulatory tool of choice. Our preliminary analysis of cost structures suggests that this method, which is essentially a limited cost of service approach, would have all of the administrative disadvantages of full cost of service regulation, but with less precision. As ETI discusses more completely under equipment rates in Appendix D, there are many discrete parts of a cable operator's cost structure that could be directly attributed but substantial definitional efforts would be required to implement a costing methodology giving reasonable regulatory assurance and stability over time.[13/] The phrase "cost of signals" is itself confusing because in cable industry parlance these costs are programming and program acquisition

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13/ Certainly part of the definitional effort required would affect the draft cost allocation rules discussed in ¶55 and footnote 84. As elaborated in Appendix B to these comments, the outline of these rules would need to be substantially revised in order to ensure that GAAP compliance is maintained, that the rules effectively relate to the actual cost structure of cable systems and that the rules for allocating joint and common costs are applied only after more directly attributable costs have been assigned based upon specific cost causation measures.

costs. The majority of the operator's costs, including the costs which might be directly assigned, involve capital and operating costs of the system, not just programming.

(2) Cost of Service [¶57-61]

We have previously explained that cost of service regulation would poorly serve the goals of the 1992 Act but must be preserved for individual systems as a safety valve against confiscation. This approach need not, however, require complete cost of service ratemaking as outlined in the Commission's Appendix B. Rather, the Commission should rely on GAAP, reference documents such as special studies, appraisals, and engineering analysis. A more detailed analysis is attached as Appendices A and B.

In such analyses, cable operators should be permitted (but not required) to cost average across community borders where consistent with established accounting records. Continental for example, does not keep extensive accounting records at the franchise or system level, but aggregates them within operations units. This has allowed groups of systems to achieve operational savings which might otherwise be unavailable to smaller units. However, it also means that the accounting data required for a cost of service study is available only in that larger operations unit. While some costs can be segregated out by franchise (such as PEG support, special franchise assessments and taxes), an operator should have the ability to adapt its rate case to available accounting units.

E. Regulation of Rates for Equipment [¶63-71]

(1) A Cost Cap Model

In Appendix D Continental describes a methodology similar to that used to identify the costs of telephone equipment, when it was regulated, or to establish the costs for other, unregulated equipment. The methods discussed in Appendix D are compatible with cost analysis for this entire range of devices.

Precisely how the resulting costs are applied, e.g., the extent if any to which these costs are bundled or unbundled with other services or devices, is a separate, pricing decision. Congress expressed no intent to require the unbundling of equipment except to the extent required from the FCC's compatibility rulemaking. That rulemaking requires a careful analysis of theft of service problems, technology, and Congressional response to the FCC's report, all of which the NPRM has prejudged in its tentative preference for unbundling.

The cost method provides information that can be used to evaluate pricing questions, and to provide a subsidiary check on the level of equipment prices included in any non-basic rate benchmark. The methodology identifies the directly attributable costs associated with the equipment, including the average level of profits for cable firms. This directly attributable cost can be factored up to account for general administrative or other costs, which are not calculated by this method. The combination of these costs can be used to satisfy the "actual cost" test of section 623(b)(3). The "cost" of additional outlets is not, as the Commission assumes [¶71], merely the incremental cost of cabling. Appendices D and E present the engineering and economic bases for assigning to additional outlets the extra power and plant costs needed to deliver adequate signal to additional outlets.

The methodology discussed in Appendix D allows, but does not require, a cable operator to recover installation charges by means other than a one-time fee or to establish equipment rental prices that account for sales to the consumer. Unrecovered installation costs, partial sales credits or other pricing mechanisms are recovered over the average period in which the operator has the opportunity to amortize such effects. This method is potentially quite flexible. It could, for example, differentiate between the installation costs associated with installing outlets for additional TV's (a) when the primary service is installed, (b) when a subsequent trip to the customer's home is required, or (c) when additional outlets are merely upgraded or downgraded on site. Such flexibility of methodology is crucial because the statute does <u>not</u> compel operators to abandon the varieties of pricing by which installation and equipment costs are recovered. Marketing needs have always necessitated discounting of installation. It would be contrary to the Act's purpose to construe it as erecting barriers to cable's accessibility.[14/] As explained below, converters, remotes and other equipment may be sold, rented, or otherwise provided under various arrangements. We do note that nothing in the Act supports the suggestion [¶67] that customers buying cable equipment on time may renege on the contract in preference for another service. That same customer would be contractually obligated to pay off his compact disc player even if digital audio tapes become more attractive to him/her.

(2) Jurisdiction Over Equipment Should Be Assigned With the Service For Which It Is Required [¶65]

The Commission must also draw a clear distinction between equipment needed to receive basic service and equipment needed to receive optional cable programming services. The statute literally assigns "equipment used for" basic to basic jurisdiction, and "equipment used for" satellite tier to FCC jurisdiction under the tier complaint rules. Indeed, the

14/ Continental would accept different FCC prescribed installation prices for wired and unwired homes, but prefers to average installations costs (as it does with variations in time and labor); and to maintain marketing flexibility. We do not believe the decision should be placed in the hands of local governments.[¶69].

Conference specifically <u>added</u> equipment to the FCC's satellite tier complaint jurisdiction to revise the House proposal leaving such equipment only with basic. Conf. Rep. 66. "Equipment" is frequently used for both jurisdictional services, as the Commission well knows from its prior history of allocating CPE between the interstate and intrastate jurisdictions. Rather than recreating the difficult history of <u>Smith</u> v. <u>Illinois Bell Tel. Co.</u>, the Federal State Joint Board, separations manuals and the Ozark Plan, it would be far more sensible to assign equipment to the service for which it is required. Thus, if an addressable converter is required to access (scrambled) basic service, its price would be regulated under the basic service regime. If basic were unscrambled, but an addressable converter was required to receive satellite tier services, the price of that converter would be subject to complaint only under the "bad actor" regime at the FCC. Likewise, converters required only to access premium services should, like the premium services themselves, be deregulated. This presents a sensible jurisdictional allocation which makes sense of the Act's assignment of equipment to both jurisdictions. Moreover, it serves the Act's primary purpose of affording the greatest protection to subscribers of the basic service, and increasingly more limited protections as customers buy more optional services. It also avoids the jurisdictional nightmares which plagued telephone CPE until CPE was deregulated. It also provides the incentives necessary to encourage research and development in new equipment technologies, which would be stifled by rules limiting recovery of <u>all</u> equipment to "cost."

(3) <u>Competitive Equipment Should Be Deregulated</u>

Non-addressable converters and universal remotes are widely available. To create an appropriate stimulus for a competitive equipment market, the Commission should rule that any operator who provides converters and remotes on an unbundled basis may price them free of regulation with respect to any level of service with which competitive equipment is compatible. Thus, if basic service is unscrambled and unavailable on cable ready TV's a "plain vanilla" converter may be provided without price regulation. If universal remotes are compatible with the operator's converter, then handheld remotes should not be price regulated. In all of these cases, service tiers and equipment could also be provided together in packages (<u>See</u> Part V.C.), as long as they are also available at unbundled prices.

(4) <u>Maintenance Contracts Are Not Regulated</u>

If the Commission insists upon unbundling equipment from regulated service, it should clarify that equipment may also be marketed in conjunction with service agreements. Cable operators have particular obligations to contain signal leakage, and, like LECs, should be free to market optional home wiring maintenance agreements in a package with equipment, so long as